

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Intercarrier Compensation)	CC Docket No. 01-92
Regime)	
)	

**REPLY COMMENTS OF SACRED WIND COMMUNICATIONS, INC.
ON PETITIONS FOR RECONSIDERATION**

Sacred Wind Communications, Inc. (“Sacred Wind”) respectfully submits these reply comments on the Petition for Reconsideration of the Advocates for Rural Broadband (“WTA”), the Petition for Reconsideration and Clarification of The Rural Broadband Association (“NTCA”) and the comments of The Voice of Mid-Sized Communications Companies (“ITTA”) in connection with the *Report and Order*, *Order and Order on Reconsideration*, and *Further Notice of Proposed Rulemaking* in the captioned proceeding.¹

INTRODUCTION AND SUMMARY

The Commission already recognizes that telecommunications deployment on Tribal Lands has historically been poor due to the distinct challenges in bringing connectivity to these areas.² Sacred Wind is taking this opportunity to comment on petitions of reconsideration as they relate to serving Tribal

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (Rate of Return Reform Order and FNPRM).

² See Rate of Return Reform Order and FNPRM, ¶¶ 373-374; *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 479 (2011), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

Lands. Sacred Wind provides as background a number of its achievements on Navajo Lands in New Mexico and would like to point out that, because of its success as a services company and its exemplary engagement with the Navajo Nation, its successes in bridging the digital divide have not only been noticed, but shared by, the Navajo Nation.³

In the first section, *The Commission Should Consider an RLEC's Full Cost of Providing Broadband Only Service in Determining Broadband Lifeline Support*, Sacred Wind outlines how it identifies and is in agreement with WTA's request for reconsideration regarding broadband-only rates (*Benchmark and Budgetary Controls Render it Unlikely That Retail Broadband Rates Can Comply With Reasonable Comparative Ceilings*)⁴ and gives detail on the service delivery costs it incurs and their potential impact on a Broadband Lifeline Program within its territory.

In the second section, *Competitors Operating within an RLEC's Study Area Should Be Held to the Same Speed Standards as the Incumbent*, Sacred Wind submits its shared concern as presented by WTA and commented on by ITTA. Sacred Wind asserts that allowing a "qualified unsubsidized competitor" entry with a substandard product will only harm consumers by reducing competition, investment, and consumer choice.

In the last section, *The Commission Should Allow for a Streamlined Extension Process for Meeting Build-Out Obligations*, Sacred Wind would like to underline the issue of Right of Way ("ROW") on Navajo Tribal Lands, and would seek support for a streamlined process for potential extensions to service deadlines to reach remote clusters of homes.

DISCUSSION

1. Background on Sacred Wind Communications

Sacred Wind is a privately owned, New Mexico-based corporation formed in 2006 to introduce basic telephone and broadband services to the many thousands of unserved and underserved homes on the

³ See generally *Reply Comments of the Navajo Nation Telecommunications Regulatory Commission to Further Notice of Proposed Rulemaking*, filed in WC Dockets No. 10-90 and 14-58, and CC Docket No. 01-92 (Filed June 15, 2016).

⁴ See WTA Petition at 22-24.

Navajo Nation Reservation and near-Reservation lands in New Mexico, as well as to Navajo Schools, Bureau of Indian Affairs (“BIA” or “BIE”) schools, State of New Mexico Public Schools, local Tribal and non-Tribal businesses, and Navajo Nation government locations, such as local Chapter houses, which operate as local governance centers similar to town halls. Sacred Wind is the only non-tribally owned RLEC in the country wholly dedicated to serving a Tribal community, having developed a basic local and broadband infrastructure over a vast unserved tribal area of the Southwest. Sacred Wind has a unique relationship with the Navajo Nation, with its Navajo customers, and has won national and local recognition for its approach to serving residents in a challenging geographic and political area.

In 2006, the Sacred Wind acquired from CenturyLink (then Qwest Corporation) a portion of Qwest’s service territory comprising approximately 3,200 square miles in northwestern New Mexico on the Navajo Reservation and near-Reservation lands in which were included limited Qwest copper loop facilities. The lands are a mixture of complex land jurisdictions, shared by the Navajo Nation, BIA, BLM, State of New Mexico, county, and private ranches, known as the “checkerboard” where the Navajo People of Eastern Navajo Agency reside. Within this area, Sacred Wind serves a population of approximately 23,300, 98 percent of whom are registered Navajo Nation members.

The population density of its service territory is about 7.3 people per square mile, one of the most sparsely populated areas in the country. A disproportionate number of the Navajo Nation households are at or below the national poverty level. The Navajo Nation population at large is among the highest at risk in the nation for school dropout, teen pregnancy, infant mortality, teen suicide, heart disease and diabetes, illustrating the impoverished and disadvantaged nature of the immediate community. Sacred Wind the carrier of last resort for 6,300 households cannot terminate or withdraw from providing telephone service unless the New Mexico Public Regulation Commission (“NMPRC”) finds that another telecommunications company is able to provide service without interruption. At this moment no other fixed voice company is in a position in Sacred Wind’s service area to provide any such service.

Due to the complexities in the Tribal land status, traditional copper last-mile wireline technology is particularly ill-suited for many customers in these Tribal lands. In addition, the deployment of wired

telecommunications networks over a vast land area to a sparse population is cost prohibitive. To compensate and adjust to these challenges, Sacred Wind has built out an alternative wireless network to a wireline network that enables Sacred Wind to deliver voice and broadband services to its customers. The alternative wireless is an IP-based hybrid fiber/point-to-point microwave backbone network integrated with a 3.65 GHz WiMAX as the fixed wireless local loop (“FWLL”) access network solution.

For many remote subscribers, the FWLL system replaces the typical copper, twisted pair distribution system with a point-to-multipoint radio access network operating on a 3.65 GHz or 5.8 GHz WiMax platform. Sacred Wind operates an all-IP network over an Ethernet transport across its entire network, including the last mile FWLL. Its switches are both TDM and IP compatible and specific components of its network are designed to accommodate TDM when necessary.

At the time of Sacred Wind’s acquisition of Qwest Corporation’s last mile system on Navajo Nation lands, only 42 residential and business customers, less than 2 percent of Sacred Wind’s acquired customer base, all of whom living along the municipal boundaries of Gallup and Farmington, NM, had access to DSL services at download rates between 256 Kbps and 512 Kbps. Today, the use of WiMAX technology and the managed nature of IP transmission throughout the Sacred Wind network provide residential subscribers with quality service and broadband speeds of 4 Mbps download, or higher, and some customers have access to 10/1 Mbps service. Having built a middle and last mile fixed wireless network interfaced with the older acquired copper landlines, and recent areas reinforced with fiber optic middle mile, Sacred Wind has achieved its initial objectives of offering basic and advanced telecommunications services to nearly 90 percent of the tribal homes in its service territory that have electric service.

The FCC’s Lifeline and Universal Service Fund/Connect America Fund (“USF/CAF”) programs, along with low interest loans from the USDA-RUS’s telecommunications and broadband loan and grant programs, have been critical to Sacred Wind’s ability to bring voice and broadband services to its Navajo

customer base.⁵ These programs have been successfully, efficiently, and conscientiously utilized by Sacred Wind to achieve the FCC's goals on Navajo Nation lands. With respect to the USF/CAF program in particular, Sacred Wind has pursued and received the USDA-RUS loans to enhance its infrastructure in furtherance of FCC goals and its customers' needs.

2. The Commission Should Consider an RLEC's Full Cost of Providing Broadband-Only Service in Determining Broadband Lifeline Support

In the NTCA petition, NTCA contends "the Universal Service budget is insufficient to permit most rural consumers to receive stand-alone broadband at reasonably comparable rates as the support mechanism is currently structured."⁶ Sacred Wind, like NTCA, respects and understands the Commission's goals in the *Rate-of-Return Reform Order*, but Sacred Wind is compelled to expand upon NTCA's arguments in the *Petition* regarding the insufficiency of the Commission's plan to provide stand-alone Broadband in Sacred Wind's service territory.

For the reasons described below Sacred Wind believes that the Commission's \$75.20 rate benchmark for 10/1 Mbps service for low income, especially low income Tribal, customers, is unworkable, and its \$42.00 customer contribution to that broadband benchmark rate is arbitrary, concurring with the WTA's assertion that the latter is intended to reduce the amount of CAF/BLS support needed for broadband-only service in order to hold RoR carriers' high-cost support to the Commission's predetermined \$2.0 billion annual budget. For many RoR carriers, and virtually all RLECs serving Tribal lands, the underlying costs of providing and maintaining a subscriber loop far exceeds \$75.20 per month.

Currently, RoR carriers' loop costs are separated between interstate and intrastate jurisdictions and their revenue requirements are identified separately for both the intrastate (voice) and the interstate

⁵ Sacred Wind expanded its network through a \$55 Million low interest loan from the USDA-Rural Utilities Service. The company has just received approval for a second USDA-RUS loan of \$13.8 Million to expand and improve its broadband infrastructure over the next three years with which SWC intends to increase broadband availability of no less than 10 Mbps download to 90 percent or more of its customer base.

⁶ NTCA Petition at 2.

(largely broadband) portions of their network. If the Commission establishes high cost support for broadband-only service, and the RoR carriers were to provide such service to its customers, the entire loop would be ascribed to the interstate jurisdiction and the revenue requirement for operating and maintaining that loop would fall to the broadband service. Said differently, the underlying cost of the loop in providing broadband-only would not be substantially different from providing voice and broadband. For those participating in the National Exchange Carriers Association (“NECA”) cost recovery program, their contributions to the NECA revenue pool for broadband-only service would essentially remain the same as their contributions for voice and broadband. For example, as part of Sacred Wind’s 2015 Cost Study, its total monthly loop costs surpass \$200 per customer and its loop cost recovery is less than that under current HCLS and ICLS caps.

Approximately \$60 per customer per month of loop cost is unrecovered currently, which must be made up from customer revenues and Tribal Lifeline support. If it were to add to that unrecovered amount NECA’s tariffed assessment of \$35 per customer for 10/1 Mbps service, direct ISP assessments, and company operational and administrative support, the total retail cost base for pricing broadband service at 10/1 Mbps would be no less than \$110. This, then, opens up a concern that goes to the heart of the Commission’s goal of providing an affordable broadband-only service and especially a Broadband Lifeline service. The full costs of a RoR carrier’s loop cost must be taken into consideration when establishing support mechanisms for broadband-only service. Equally important, the price of broadband-only service and Broadband Lifeline service must be affordable for the customer.

Over 80 percent of Sacred Wind’s customers subscribe today to Tribal Lifeline service. Approximately 40 percent of Sacred Wind’s voice customers subscribe to Sacred Wind’s broadband service, with little distinction in subscription percentage between Tribal Lifeline and non-Tribal Lifeline customers. The distinction can be made, however, between the speed of broadband as subscribed by Tribal Lifeline customers and as subscribed by others. Sacred Wind believes from experience and by impression that most of its Tribal Lifeline customers purchase 2.0 Mbps (our lowest speed) and 4.0 Mbps

download speeds as a matter of affordability than a preference for speeds. We further contend that customers should be allowed to choose the speeds of their choice, based on their own usage needs and on affordability, and that Broadband Lifeline public policy be adjusted to accommodate them. The Commission should consider establishing a Tribal Lifeline discount that would apply to a range of speeds and thus allow customers to choose for themselves which service best meets their needs. This is not meant to relieve a carrier from its obligation to make 10 Mbps download reasonably available to everyone in its study area, but to change the focus of this policy objective to the particular needs of the subscriber.

3. “Qualifying Unsubsidized Competitors” Operating within an RLEC’s Study Area Should Be Held to the Same Speed Standards as the Incumbent

Sacred Wind agrees with WTA’s assertion that a competitive broadband provider be qualified as an unsubsidized competitor, with respect to the incumbent’s receipt of CAF/BLS support, only if the competitor can match the broadband speeds provided by the incumbent. To require or permit anything less would subject a study area’s customers to second class status. Such change in the FCC’s position on this might also encourage greater investment in infrastructure rather than provide disincentives for competition. As pointed out by the WTA, many newer telecommunications infrastructures are designed to be scalable, enabling a carrier to improve service ranges and increase broadband capacities as companies are able to afford and as subscriptions increase. A case in point: Sacred Wind’s fiber-to-fixed-wireless-and-copper-last-mile network is highly scalable. When initially installed under an USDA-RUS Telecommunications Loan of \$55 Million, it met the USDA-RUS’s requirement of 4 Mbps download availability within the company’s study area. As customers have increased their demand for higher speeds, Sacred Wind has made relatively minor adjustments to its network to meet individual demand. Under a recently granted smaller, second USDA-RUS loan, Sacred Wind intends to build out a network that can provide over 10 Mbps download to all of its customers, which will be even more easily scalable to over 25 Mbps.

If a competitor were to seek qualification as an unsubsidized competitor upon reaching a threshold of 10 Mbps download, the customers within Sacred Wind’s study area would be relegated a

toehold on the rim of the digital divide just as they thought themselves free of it. Sacred Wind's operations, in turn, would suffer harm with the further reduction or loss of CAF/BLS support, reducing competition, investment, and consumer choice.

4. The Commission Should Allow for a Streamlined Extension Process for Meeting Build-Out Obligations

In the WTA Petition for Reconsideration, the WTA argues that the order adopts a five-year service expansion obligation for RoR carriers under 47 CFR §54.308(a)(2) whereas a longer period to meet its service obligations is granted to A-CAM participants. WTA contends that “some broadband deployments projects will require extensive environmental assessments and approvals that can take month or years to obtain before they can get ... to construction. ... [and] obtaining rights-of-way and easement from governmental and private entities can and will be time consuming.”⁷

For Sacred Wind, acquisition of Rights-of-Way (“ROW”) has been a daunting task as it has followed Navajo Nation and BIA rules and procedures. In addition, the assessments commonly exceed current market value of the land to be withdrawn, and reviews of the archaeological and environmental studies are not done in a timely manner due to understaffed Tribal offices. This process for ROW often takes years to achieve, adding enormous cost for build-out before construction.

For Indian “allotment” lands, the applicant is required to obtain consent from at least 51 percent of the allottees and/or their descendants, regardless of where in the United States or overseas they may reside. Sacred Wind, in nearly all instances, will avoid placing facilities on Indian allotment lands, though alternative routes bypassing many square miles of allotment lands often raise the cost of its infrastructure.

Accordingly, Sacred Wind also agrees with the WTA in urging the Commission to adopt a streamlined waiver process that would permit RoR Path and A-CAM Path Carriers extended deadlines for meeting interim and/or ultimate build-out requirements if they can show that they had made bona fide attempts to obtain the requisite preconstruction approvals.

⁷ WTA Petition at 21.

CONCLUSION

Sacred Wind encourages the Commission, in its establishment of its Broadband-only service objectives and its Broadband Lifeline discounts, to consider what low income Tribal members actually pay today for their telecommunications services, what is affordable for them, and what levels of Broadband services they deem sufficient. Sacred Wind understands and accepts its obligations to deliver urban level services to Tribal Lands, having already bridged the Digital Divide that once existed in its service territory, but urges the Commission to recognize that the low income nature of the communities it serves, the low density of the population, and the significantly higher costs of developing, maintaining and operating infrastructures on Tribal Lands, including the arduous and exorbitantly priced ROW processes, cause the provision of all telecommunications services on Tribal Lands to stand out among most RoR carriers in this country. That there is a need for a Tribal Broadband Factor and a streamlined extension process to meet Commission timelines is more than evident. Additionally, in order to ensure that Sacred Wind's customers are not shortchanged as competition may grow in its service territory, the Commission should require the same level of service delivery and systems scalability for Qualifying Unsubsidized Competitors as Sacred Wind is committed to delivering in its territory.

Sacred Wind is proud of its record of serving the People of the Navajo Eastern Agency and can thank the Commission for its USF/CAF support programs, without which not a single Navajo community in the Eastern Agency would have the reliable voice and Broadband services they have today. We urge the Commission to continue to develop programs to benefit rural areas, particularly Tribal Lands, and to acknowledge through its policies that Tribal Lands are distinct from most rural areas in the country and that the providers of telecommunications services to those Lands cannot be lumped into the same cost limit and time limit baskets as all other RoR carriers. We thank the Commission for this opportunity to

again bring to national attention the many disadvantages faced by Tribal members and how targeted policies and programs will work to serve even the most vulnerable.

Respectfully submitted,

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